

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	MDL NO. 1456
LITIGATION	)	Civil Action No. 01-12257-PBS
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THIS DOCUMENT RELATES TO	)	Hon. Patti B. Saris
01-CV-12257-PBS AND 01-CV-339	)	
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**TRACK ONE DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL**

The Track One Defendants,<sup>1</sup> by their attorneys, hereby move this Court for leave to file the following submissions under seal:

1. Track One Defendants' Sur-Reply in Opposition to Class Certification, with Appendix thereto;
2. Track One Defendants' Memorandum in Opposition to Plaintiffs' Motion to Strike the Declaration of Steven J. Young;
3. Track One Defendants' Memorandum in Opposition to Plaintiffs' Motion to Strike the Declaration of Eric M. Gaier, Ph.D.;
4. AstraZeneca Pharmaceutical LP's Individual Sur-Reply in Opposition to Plaintiffs' Motion for Class Certification, and Exhibits thereto;
5. Defendant Bristol-Myers Squibb's Individual Sur-Reply Memorandum in Opposition to Class Certification, and Exhibit thereto;
6. The Johnson & Johnson Group's Sur-Reply Memorandum in Opposition to Class Certification, and Exhibits thereto;
7. The Schering-Plough Group's Individual Memorandum in Opposition to Class Certification; and

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<sup>1</sup> The Track One defendants are: AstraZeneca, the BMS Group, SmithKlineBeecham, d/b/a GlaxoSmithKline, the Johnson & Johnson Group, and the Shering-Plough Group.

8. Sur-Reply Declaration of Eric M. Gaier, Ph.D. in Support of Defendant's Opposition to Class Certification, and Exhibits thereto; and

9. Sur-Reply of Steven J. Young in Opposition to the Plaintiff's Motion for Class Certification, and Exhibits thereto.

Pursuant to the Protective Order entered by this Court on December 13, 2004 (the "Protective Order") both the parties in the above captioned case and non-party witnesses have designated many documents and other information produced in this litigation as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The submissions listed above incorporate – either directly or indirectly – information that has been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Not only do the Track One Defendants' submissions listed above quote extensively from and/or attach confidential documents, they also include references to contractual terms and pricing data that defendants and non-party witnesses deem highly proprietary in nature. Pursuant to paragraph 15 of the Protective Order, any document or pleading containing quotes from or otherwise referencing such information shall be filed under seal.

On December 17, 2004, citing similar reasons, plaintiffs sought leave to submit papers in support of their motion for class certification under seal.

WHEREFORE, the Track One Defendants respectfully request that this Court grant them leave to file the submissions listed above under seal.

Respectfully submitted,

THE TRACK 1 DEFENDANTS

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Dated: January 21, 2005

**CERTIFICATE OF SERVICE**

I certify that on January 21, 2005, a true and correct copy of the foregoing Notice of Filing Under Seal was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties.   

/s/ Jessica V. Barnett  
Jessica V. Barnett

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for the Track One Defendants conferred with counsel for plaintiffs on this motion. Plaintiffs reserved the right to challenge, upon review of the documents that are being filed under seal pursuant to this motion, the confidentiality of any such documents in accordance with the Protective Order.

/s/ Jessica V. Barnett  
Jessica V. Barnett